

7180
DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

J. Roberts
Proc. I

FILE: B-190794

DATE: July 31, 1978

MATTER OF: Telex Computer Products, Inc.

DIGEST:

1. In procurement of highly technical equipment, determination of whether a proposal is in the competitive range is primarily a matter of administrative discretion with the procuring activity and ordinarily will be accepted by this Office, absent a clear showing of unreasonableness.
2. Where proposal lacks sufficient detail to show technical acceptability, request for additional clarification and elaboration may be sufficient to place the offeror on notice that deficiencies exist in its proposal.
3. If agency, after conducting meaningful discussions, is prevented from making an affirmative determination of technical acceptability due to proposer's failure to provide requested details, the proposal may be eliminated from the competitive range without further discussion or request for best and final offer.

Telex Computer Products, Inc. (Telex) protests any contract award under Request for Proposals (RFP) No. MSFC-S-1-7-AH-00020 issued by the Procurement Office, George C. Marshall Space Flight Center, National Aeronautics and Space Administration (NASA), Huntsville, Alabama. Telex contends that the contracting officer failed to conduct meaningful negotiations, arbitrarily excluded Telex from the competitive range and intends to award a contract without adequate competition and in violation of the requirement to conduct discussions.

The RFP solicited offers to provide for lease of all hardware, software and services required for magnetic tape subsystems to be used on Government-owned UNIVAC 1108 computing systems at NASA's Huntsville Computer Complex (Huntsville) and its Slidell Computer Complex (Slidell). The RFP required that the "software [be] compatible with UNIVAC 1108 and 1100/XX Operating System Level 32, and subsequent releases." The proposal instructions required "detailed information" identifying the individual items making up the proposed subsystem, "discussion" of plans for meeting technical specifications and a delivery and installation schedule. The RFP stated that award would be made to that offeror whose acceptable proposal was determined to represent the lowest overall cost to the Government over the life of the subsystem, price and other factors considered.

Because NASA's Technical Evaluation Committee was unable to make any clear determination with regard to the technical acceptability of the three proposals received, all three were initially placed within the competitive range subject to further technical evaluation. The Evaluation Committee then prepared questions concerning each offeror's proposal, and by letters dated September 23, 1977, offerors were asked to clarify and elaborate on their proposals.

The letter to Telex reads, in pertinent part, as follows:

"In order to complete the technical evaluations of your proposal in response to subject RFP, additional information is required, as follows:

"A. The following questions and/or comments specifically reference paragraphs of the Technical specifications for UNIVAC 1108 Magnetic Tape Subsystems', Appendix A, as amended for RFP 8-1-7-AH-00020.

* * * * *

"3. Reference Paragraph 1.1.C - Please elaborate on software required to satisfy this specification."

Specification paragraph 1.1.C of the RFP states:

"C. The hardware must be software compatible with the UNIVAC 1108 and 1100/XX Operating System Level 32, and subsequent releases."

In this connection Telex's October 4, 1977 response to the request for elaboration concerning this requirement states:

"The proposed 6876-I and related subsystem is compatible with Univac level 32 operating system using the Uniservo 12/16 and MSA handlers. Compatibility with subsequent systems will be maintained by Telex through the 1100/80. The proposed 6876-II and related subsystem is compatible with Univac level 32 operating system using the Uniservo 8C handler. Development of a 'Uniservo 30 handler' and/or 'Uniservo 12/16 handler' compatible micro program for the 6876-II, is currently underway and will be supplied when required in order to maintain compatibility with the NASA system. Compatibility with subsequent systems will be maintained by Telex through the 1100/80."

NASA asserts that the September 23 letters afforded all proposers an "equal opportunity to correct identified weaknesses or deficiencies" in their proposals. The Evaluation Committee reviewed the three timely submitted written responses and eliminated from the competitive range all offerors except UNIVAC Division (UNIVAC), Sperry Rand Corporation which was determined to be the only technically acceptable proposer. The above-quoted response by Telex was considered inadequate to demonstrate the compatibility of the software.

Upon notification that its proposal was no longer being considered for award, Telex requested and received a debriefing during which it asked permission to submit additional information showing full compliance with the

specifications. NASA replied that such a submittal would be treated as a late proposal and would not be considered. Telex then protested to this Office.

NASA's Technical Evaluation Committee summarized its findings with regard to the Telex proposal as follows:

- "The Technical Evaluation Committee with due investigation of all materials furnished by the proposer, could not ascertain that equipment and capabilities were being offered to meet the requirements. Serious technical deficiencies were noted and are detailed in the enclosed technical evaluation. Although the request for elaboration was made to the proposer on his proposal, his response produced no information useful in evaluation of the proposal. Therefore, the Technical Evaluation Committee recommends that the offer submitted by this company is NOT ACCEPTABLE." (Emphasis added.)

Telex proposed tape drive subsystems each consisting of a channel adapter, a control unit and tape drives. The channel adapter contains a microprogram which modifies signals between the UNIVAC central processing unit (CPU) and the Telex tape drive subsystems so that the CPU can control the tape drives. The control unit controls multiple tape drives on which tapes are mounted to be read or written as required by the CPU. In order for a CPU to control and properly interface with such peripheral equipment as tape drives, there must be within the CPU the operating system (software) which is referred to as a "handler". NASA determined that the Telex proposal was seriously deficient in this area.

For Slidell, Telex proposed to use the UNISERVO 12/16 and MSA handlers which are currently in use at Slidell. Telex proposed to use the UNISERVO 8C handler which is a part of the UNIVAC 1108 operating system level 32 in use at Huntsville. As the UNISERVO 8C handler provides only three densities, that is, measures of the amount of information that can be placed on a tape, and the requirement at Huntsville is for five densities, Telex allegedly intended to

provide 20 lines of local code (software to instruct the CPU) to modify the UNISERVO 8C handler at that location. It did not, however, submit this code with its proposal or in response to NASA's technical questions. NASA concluded that the Telex software package for Huntsville, as proposed, could not be determined to be technically acceptable because the UNISERVO 8C handler did not have the capability for required density selection. Although NASA found that the Telex UNISERVO 12/16 and MSA handlers met the requirements for Slidell in some respects, the agency determined that Telex's failure to provide adequate responses to other specifications affecting Slidell also made it impossible to render any finding of technical acceptability for that portion of the proposal. Although Telex may be able to satisfy the Government's requirements as to software compatibility, we cannot disagree with NASA that Telex did not adequately demonstrate how it proposed to do so.

Telex contends that NASA failed to conduct meaningful negotiations and should have pointed out specific instances of weaknesses in its proposal. Telex denies that its proposal and response to written questions failed to provide all information necessary to demonstrate full technical acceptability. It states that it did not understand that its response would be considered as its final offer because the September 20 letter did not offer Telex an opportunity to submit price, technical and other revisions to its proposal and did not inform it of a specified closing date for negotiations after which time all revisions would be treated as late proposals. Telex states that the RFP called for off-the-shelf items, contained detailed performance specifications, contemplated no research and did not provide a comprehensive evaluation scheme. Consequently, Telex believes the solicitation was inadequate to suggest that NASA desired a great amount of detailed information in its technical proposal and that this inadequacy was not cured by the request for additional information and elaboration.

Written or oral discussions must be meaningful, and to this end the agency usually must furnish information to offerors as to the areas in which their proposals are deficient, so that the offerors are given an opportunity to satisfy the agency's requirements. 51 Comp. Gen. 431 (1972). However, the content and extent of

discussions needed to satisfy the requirement for meaningful discussions is a matter primarily for determination by the contracting agency, whose judgment will not be disturbed unless clearly without a reasonable basis. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61.

Telex's argument that the September 23 letter did not put it on notice of weaknesses in its proposal is not persuasive. We have held that where a proposal lacks sufficient detail, a request for additional clarification, amplification, and discussion may be sufficient to place the offeror on notice that deficiencies exist in its proposal. See ASC Systems, Corporation, B-186865, January 26, 1977, 77-1 CPD 60 and General Exhibits, Inc., B-182669, March 10, 1975, 75-1 CPD 143. In our opinion, NASA's September 23 letter requesting clarification and elaboration was sufficient notice of proposal deficiencies.

The record indicates that Telex was afforded ample opportunity to submit a technically acceptable proposal. The RFP required detailed technical information and the September 23 letter reiterated, by the reference to the RFP, this requirement for details, and explicitly asked for further elaboration in specific areas. As such, we believe that there is nothing unreasonable in NASA's judgment that the statutory requirement for meaningful discussions had been satisfied, and that further attempts to obtain necessary information from Telex were not required. Furthermore, we believe it would be unfair to the other competitors for an agency to help one offeror through successive rounds of discussions in order to bring its proposal up to a level of acceptability where that offeror has been given an opportunity to correct a large number of deficiencies and such revisions as are made still leave a number of uncorrected deficiencies as a result of the offeror's lack of competence, diligence, or inventiveness. Austin Electronics, supra; 51 Comp. Gen. 621 (1972).

We have held that once a proposal is determined to be unacceptable it properly may be excluded from the competitive range, thereby obviating the need for any further discussion and request for best and final

offer. See 52 Comp. Gen. 198 (1972); Operations Research, Inc., 53 Comp. Gen. 593 (1974), 74-1 CPD 70. Although the principle enunciated in these decisions applies to circumstances in which a clear determination of technical inacceptability was made, we find it to be equally relevant to the instant situation in which NASA was unable to make an affirmative determination of technical acceptability due to the proposer's failure to provide specifically requested information. Therefore, NASA reasonably excluded Telex from the competitive range without benefit of further discussion or request for best and final offer.

We conclude that the exclusion of Telex from the competition was rationally based upon the results of a meaningful negotiation and that the record is void of any clear showing of arbitrariness or unreasonable action on the part of NASA.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States